

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 377

Introduced by Senator Lieu

February 20, 2013

An act to amend ~~Section 139.43~~ Sections 1726, 1741, 1771.2, and 1773.5 of the Labor Code, relating to ~~workers' compensation~~ public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 377, as amended, Lieu. ~~Workers' compensation.~~ *Public works: project determinations: wage and penalty assessments.*

Existing law defines the term "public works" for purposes of requirements regarding the payment of prevailing wages, the regulation of working hours, and the securing of workers' compensation for public works projects. Under existing law, the body awarding the contract for a public work is required to report any suspected violations of requirements relating to public works projects to the Labor Commissioner.

Under the bill, an awarding body, that does not believe a project in which it has a legal interest is a public work, is required to provide notice, as specified, to the Director of Industrial Relations, the Labor Commissioner, and any other person who requests that notice.

Existing law authorizes the Director of Industrial Relations to establish rules and regulations for the purpose of carrying out public works requirements, including, but not limited to, the responsibilities and duties of awarding bodies relating to public works projects.

This bill would authorize any party to request from the director a determination of whether a project is a public work, and would require the director to make that determination within 60 days of the receipt of

that request, except as specified. This bill would authorize a party to make an administrative appeal of that determination within 30 days of the date of the determination, and would require the director to issue a determination on an appeal within 30 days after the receipt of the appeal, except as specified. This bill would grant to the director quasi-legislative authority to determine coverage of projects under prevailing wage requirements, and provide that a final determination on any appeal is subject to judicial review.

Existing law requires the Labor Commissioner to issue a civil wage and penalty assessment to a contractor or subcontractor, or both, if, after an investigation, the commissioner determines there has been a violation of the laws regulating public works projects, including the payment of prevailing wages. The assessment is required to be served within 180 days, with exceptions, after the filing of a valid notice of completion in the county where the public work was performed, as specified.

This bill would require the assessment to be served within 180 days of the date of the determination of the violation. This bill would toll the period for service of assessments for the period of time required by the Director of Industrial Relations to make a determination of whether the project is a public work, as specified.

Existing law authorizes a joint labor-management committee, established pursuant to a specified provision of federal law, to bring an action against any employer who fails to pay prevailing wages as required by state law. The action is required to commence not later than 180 days after the filing of a valid notice of completion in the county where the public work was performed or not later than 180 days after acceptance of the public work, whichever occurs later.

This bill would toll the period for commencing an action for the period of time required by the director to determine whether a project is a public work, as specified.

~~Existing law prohibits a person or entity, other than physicians or attorneys, from advertising, printing, displaying, publishing, distributing, or broadcasting in any manner a statement concerning services or benefits to be provided to an injured worker that is paid for by that person or entity that is false, misleading, or deceptive. Violation of these provisions is a misdemeanor punishable by incarceration in the county jail for not more than one year, or by a fine not exceeding \$10,000, or both.~~

~~This bill would make a technical, nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1726 of the Labor Code is amended to*
2 *read:*

3 1726. (a) The body awarding the contract for public work shall
4 take cognizance of violations of this chapter committed in the
5 course of the execution of the contract, and shall promptly report
6 any suspected violations to the Labor Commissioner.

7 (b) If the awarding body determines as a result of its own
8 investigation that there has been a violation of this chapter and
9 withholds contract payments, the procedures in Section 1771.6
10 shall be followed.

11 (c) A contractor may bring an action in a court of competent
12 jurisdiction to recover from an awarding body the difference
13 between the wages actually paid to an employee and the wages
14 that were required to be paid to an employee under this chapter,
15 any penalties required to be paid under this chapter, and costs and
16 attorney's fees related to this action, if either of the following is
17 true:

18 (1) The awarding body previously affirmatively represented to
19 the contractor in writing, in the call for bids, or otherwise, that the
20 work to be covered by the bid or contract was not a "public work,"
21 as defined in this chapter.

22 (2) The awarding body received actual written notice from the
23 Department of Industrial Relations that the work to be covered by
24 the bid or contract is a "public work," as defined in this chapter,
25 and failed to disclose that information to the contractor before the
26 bid opening or awarding of the contract.

27 (d) *If an awarding body believes that a project in which it has*
28 *a legal interest is not a public work, the awarding body shall notify*
29 *the Director of Industrial Relations, the Labor Commissioner, and*
30 *any person who has asked for that notice, together with the reason*
31 *therefor, not less than within 30 days of the commencement of any*
32 *work estimated to last six months or more, and before the*
33 *commencement of any work if a project is not estimated to exceed*

1 *six months. This notice shall be a public record. The director shall*
2 *create necessary forms and adopt regulations to implement this*
3 *subdivision.*

4 *SEC. 2. Section 1741 of the Labor Code is amended to read:*

5 1741. (a) If the Labor Commissioner or his or her designee
6 determines after an investigation that there has been a violation of
7 this chapter, the Labor Commissioner shall with reasonable
8 promptness issue a civil wage and penalty assessment to the
9 contractor or subcontractor or both. The assessment shall be in
10 writing and shall describe the nature of the violation and the
11 amount of wages, penalties, and forfeitures due and shall include
12 the basis for the assessment. The assessment shall be served ~~not~~
13 ~~later than 180 days after the filing of a valid notice of completion~~
14 ~~in the office of the county recorder in each county in which the~~
15 ~~public work or some part thereof was performed, or not later than~~
16 ~~180 days after acceptance of the public work, whichever occurs~~
17 ~~last. However, if the assessment is served after the expiration of~~
18 ~~this 180-day period, but before the expiration of an additional 180~~
19 ~~days, and the awarding body has not yet made full payment to the~~
20 ~~contractor, the assessment is valid up to the amount of the funds~~
21 ~~retained within 180 days of the date of the determination of a~~
22 ~~violation.~~ Service of the assessment shall be completed pursuant
23 to Section 1013 of the Code of Civil Procedure by first-class and
24 certified mail to the contractor, subcontractor, and awarding body.
25 The assessment shall advise the contractor and subcontractor of
26 the procedure for obtaining review of the assessment. The Labor
27 Commissioner shall, to the extent practicable, ascertain the identity
28 of any bonding company issuing a bond that secures the payment
29 of wages covered by the assessment and any surety on a bond, and
30 shall serve a copy of the assessment by certified mail to the bonding
31 company or surety at the same time service is made to the
32 contractor, subcontractor, and awarding body. However, no
33 bonding company or surety shall be relieved of its responsibilities
34 because it failed to receive notice from the Labor Commissioner.

35 (b) Interest shall accrue on all due and unpaid wages at the rate
36 described in subdivision (b) of Section 3289 of the Civil Code.
37 The interest shall accrue from the date that the wages were due
38 and payable, as provided in Part 7 (commencing with Section
39 1720) of Division 2, until the wages are paid.

1 (c) (1) The Labor Commissioner shall maintain a public list of
2 the names of each contractor and subcontractor who has been found
3 to have committed a willful violation of Section 1775 or to whom
4 a final order, which is no longer subject to judicial review, has
5 been issued.

6 (2) The list shall include the date of each assessment, the amount
7 of wages and penalties assessed, and the amount collected.

8 (3) The list shall be updated at least quarterly, and the
9 contractor's or subcontractor's name shall remain on that list until
10 the assessment is satisfied, or for a period of three years beginning
11 from the date of the issuance of the assessment, whichever is later.

12 (d) *The period for service of assessments shall be tolled for the*
13 *period of time required by the Director of Industrial Relations to*
14 *determine whether a project is a public work, including a*
15 *determination on administrative appeal, if applicable, pursuant*
16 *to subdivisions (b) and (c) of Section 1773.5.*

17 SEC. 3. Section 1771.2 of the Labor Code is amended to read:

18 1771.2. (a) A joint labor-management committee established
19 pursuant to the federal Labor Management Cooperation Act of
20 1978 (Section 175a of Title 29 of the United States Code) may
21 bring an action in any court of competent jurisdiction against an
22 employer that fails to pay the prevailing wage to its employees,
23 as required by this article. This action shall be commenced not
24 later than 180 days after the filing of a valid notice of completion
25 in the office of the county recorder in each county in which the
26 public work or some part thereof was performed, or not later than
27 180 days after acceptance of the public work, whichever last
28 occurs.

29 (b) *The period for commencing an action shall be tolled for the*
30 *period of time required by the Director of Industrial Relations to*
31 *determine whether a project is a public work, including a*
32 *determination on administrative appeal, if applicable, pursuant*
33 *to subdivisions (b) and (c) of Section 1773.5.*

34 SEC. 4. Section 1773.5 of the Labor Code is amended to read:

35 1773.5. (a) The Director of Industrial Relations may establish
36 rules and regulations for the purpose of carrying out this chapter,
37 including, but not limited to, the responsibilities and duties of
38 awarding bodies under this chapter.

39 (b) *Any party may request from the director a determination of*
40 *whether a project is a public work, and the director shall make*

1 *that determination within 60 days of the receipt of that request. If*
2 *the director deems that the complexity of the request requires*
3 *additional time to make that determination, the director may have*
4 *an additional 60 days if he or she certifies in writing to the*
5 *requestor, and any awarding body with a legal interest in the*
6 *project, the reasons for the extension.*

7 *(c) A party may make an administrative appeal of the director's*
8 *determination within 30 days of the date of the determination. The*
9 *director shall issue a determination on the administrative appeal*
10 *within 30 days after receipt of the appeal. The director may have*
11 *an additional 60 days if he or she certifies in writing to the party*
12 *requesting the appeal the reasons for the extension.*

13 *(d) The director shall have quasi-legislative authority to*
14 *determine coverage of projects under prevailing wage laws. A*
15 *final determination on any appeal is subject to judicial review*
16 *pursuant to Section 1085 of the Code of Civil Procedure.*

17 SECTION 1. Section 139.43 of the Labor Code is amended to
18 read:

19 ~~139.43. (a) A person or entity shall not advertise, print, display,~~
20 ~~publish, distribute, or broadcast, or cause or permit to be advertised,~~
21 ~~printed, displayed, published, distributed, or broadcast in any~~
22 ~~manner, a statement concerning services or benefits to be provided~~
23 ~~to an injured worker that is paid for directly or indirectly by that~~
24 ~~person or entity and is false, misleading, or deceptive, or that omits~~
25 ~~material information necessary to make the statement therein not~~
26 ~~false, misleading, or deceptive.~~

27 ~~(b) As soon as reasonably possible, but not later than January~~
28 ~~1, 1994, the administrative director shall adopt regulations~~
29 ~~governing advertising by persons or entities other than physicians~~
30 ~~and attorneys with respect to services or benefits for injured~~
31 ~~workers. In promulgating regulations pursuant to this subdivision,~~
32 ~~the administrative director shall review existing regulations,~~
33 ~~including those adopted by the State Bar, to identify those~~
34 ~~regulatory approaches that may serve as a model for regulations~~
35 ~~required by this subdivision.~~

36 ~~(c) A violation of subdivision (a) is a misdemeanor, punishable~~
37 ~~by incarceration in the county jail for not more than one year, or~~
38 ~~by a fine not exceeding ten thousand dollars (\$10,000), or both.~~

39 ~~(d) This section shall not apply to physicians or attorneys. It is~~
40 ~~the intent of the Legislature to exempt physicians and attorneys~~

1 ~~from this section because the conduct regulated by this section,~~
2 ~~with respect to physicians and attorneys, is governed by other~~
3 ~~provisions of law.~~

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